

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

YEHUDAH KATZ, on behalf of himself and the class,

Plaintiff,

Civil Action No.  
12-CV-1194 (WFK) (LB)

- against -

DELTA COMMUNITY CREDIT UNION,

Defendant.

**ANSWER**

-----X

Defendant Delta Community Credit Union (the "Credit Union"), by its attorneys, Torre, Lentz, Gamell, Gary & Rittmaster, LLP, as and for its Answer and Counterclaim, hereby alleges, as follows:

**AS TO INTRODUCTION**

1. With respect to the allegations contained in the paragraphs of the Complaint numbered "1," "2," "3," "4," "5," "6," "7," "8" and "9," denies that the Credit Union violated the Electronic Fund Transfer Act, 15 U.S.C. § 1693 *et seq.*, and its implementing regulations 12 C.F.R. § 205 *et seq.*, and respectfully refers all questions of law to the Court.

**AS TO JURISDICTION AND VENUE**

2. With respect to the allegations contained in the paragraphs of the Complaint numbered "10," "11" and "12," admits that the Credit Union has an ATM located in this judicial district and respectfully refers all questions of law to the Court.

**AS TO PARTIES**

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraphs of the Complaint numbered "13" and "15."

4. Denies each and every allegation contained in the paragraph of the Complaint numbered "14" except, admits that the Credit Union is a state-chartered credit union, organized under the Georgia Department of Banking & Finance; that the Credit Union has an ATM at the Delta terminal located at LaGuardia Airport; and that the Credit Union has offices located at 1025 Virginia Avenue, Atlanta, Georgia.

5. With respect to the allegations contained in the paragraph of the Complaint numbered "16," respectfully refers all questions of law to the Court.

**AS TO FACTS RELATED TO PLAINTIFF'S TRANSACTION**

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered and "17," and notes that Exhibit "A" to the Complaint is illegible.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered "18."

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph of the Complaint numbered "19," and notes that Exhibit "B" to the Complaint is illegible and alleges that the Credit Union posted the necessary notice "on or at" the ATM in question. Annexed hereto, collectively, as Exhibit "A," and incorporated herein by reference, are copies of photos of the ATM, the

notice posted on the ATM and a receipt dated March 31, 2011, the date the photos of the ATM and notice were taken, well before the plaintiff's alleged February 15, 2012 transaction. The photos were provided by Automated Teller Accessories Corp. (d/b/a ATA Services) pursuant to a Service Agreement with the Credit Union, dated June 27, 2008, a copy of which is annexed hereto, as Exhibit "B," and incorporated herein by reference. That Agreement provides, *inter alia*, for ATA to provide photos and proof of notices, logos and signage and to check for, and immediately report, missing stickers and vandalism; no such report was received by the Credit Union respecting the ATM in question prior to the plaintiff's Summons and Complaint herein being received by the Credit Union.

9. With respect to the allegations contained in the paragraph of the Complaint numbered "20," admits that on the ATM there is signage as to which cards are accepted at the ATM, and notes that Exhibit "B" to the Complaint is illegible.

10. Denies each and every allegation contained in the paragraph of the Complaint numbered "21."

#### **AS TO CLASS ACTION ALLEGATIONS**

11. With respect to the allegations contained in the paragraphs of the Complaint numbered "22" and "23," respectfully refers all questions of law to the Court.

12. Denies each and every allegation contained in the paragraphs of the Complaint numbered "24," "25," "26," "27," "28," "29," "30," "31," "32" and "33," and respectfully refers all questions of law to the Court.

**AS TO SUBSTANTIVE VIOLATION**

13. With respect to the allegations contained in the paragraphs of the Complaint numbered "34," "35," "36," "37," "40" and "41," respectfully refers all questions of law to the Court.

14. Denies each and every allegation contained in the paragraphs of the Complaint numbered "38" and "39."

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

15. The Credit Union posted the notice required by 15 U.S.C. § 1693b(d)(3)(B)(i) and 12 C.F.R. § 205.16(c)(1), as reflected in Exhibit "A" hereto, prior to the date of plaintiff's alleged transaction on February 15, 2012. If that notice was removed, damaged or altered after it had been posted, the Credit Union has no liability to plaintiff under 15 U.S.C. § 1693h(d).

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

16. Any failure to comply with 15 U.S.C. § 1693(b) or 12 C.F.R. § 205.16, which the Credit Union denies, was not intentional and resulted from a bona fide error and the Credit Union has no liability pursuant to 15 U.S.C. § 1693m(c).

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

17. Plaintiff is not entitled to any actual damages because detrimental reliance cannot be established. Plaintiff consented to the fee now complained of by accepting the fee in response to the on-screen notice of the fee and had the opportunity to cancel the transaction without incurring the fee but chose not to do so.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

18. The plaintiff's claims against the Credit Union are barred by the principles of waiver, ratification and estoppel on the grounds that the plaintiff voluntarily incurred the fee of which plaintiff presently complains after being provided with notice of the fee and the opportunity to cancel the transaction in order to avoid that fee but chose not to do so.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

19. This action cannot proceed as a class action because the plaintiff's allegations do not satisfy the requirements set forth in Federal Rules of Civil Procedure 23.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

20. Plaintiff may not maintain the instant action because to do so would permit plaintiff to proceed with "unclean hands," the plaintiff having voluntarily engaged in the transaction of which plaintiff now complains and, in order to conduct that transaction, plaintiff willingly agreed to the fee of which plaintiff presently complains.

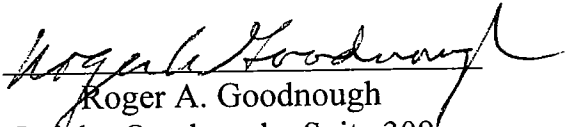
**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE AND COUNTERCLAIM**

21. Plaintiff has commenced this action in bad faith and for the purposes of harassment entitling the Credit Union to the recovery of attorneys' fees and costs under 15 U.S.C. § 1693m(f).

WHEREFORE, the Credit Union demands judgment dismissing the plaintiff's Complaint and for judgment against the plaintiff on the Credit Union's counterclaim, awarding the Credit Union attorneys' fees, costs and disbursements of this action.

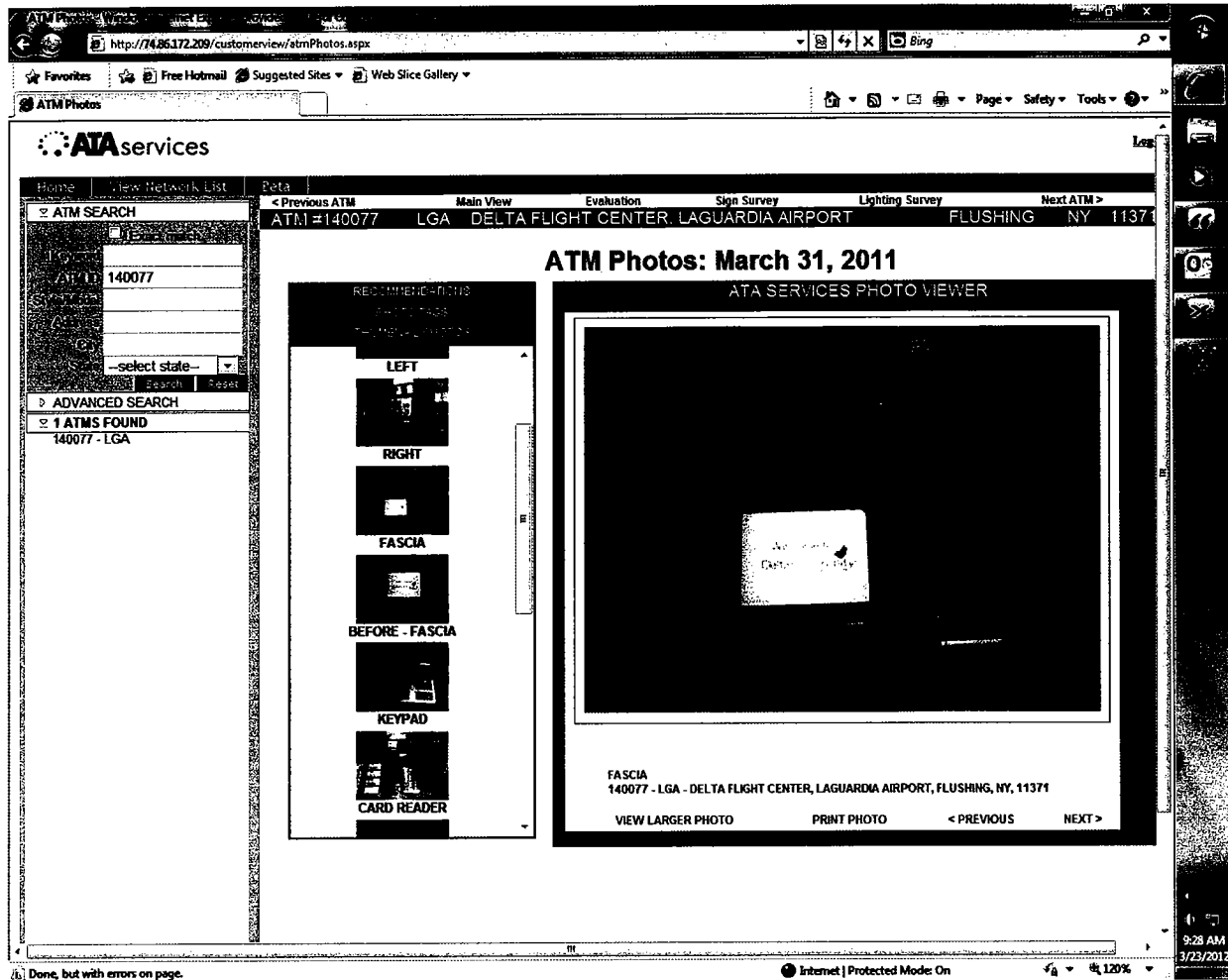
Dated: Jericho, New York  
May 15, 2012

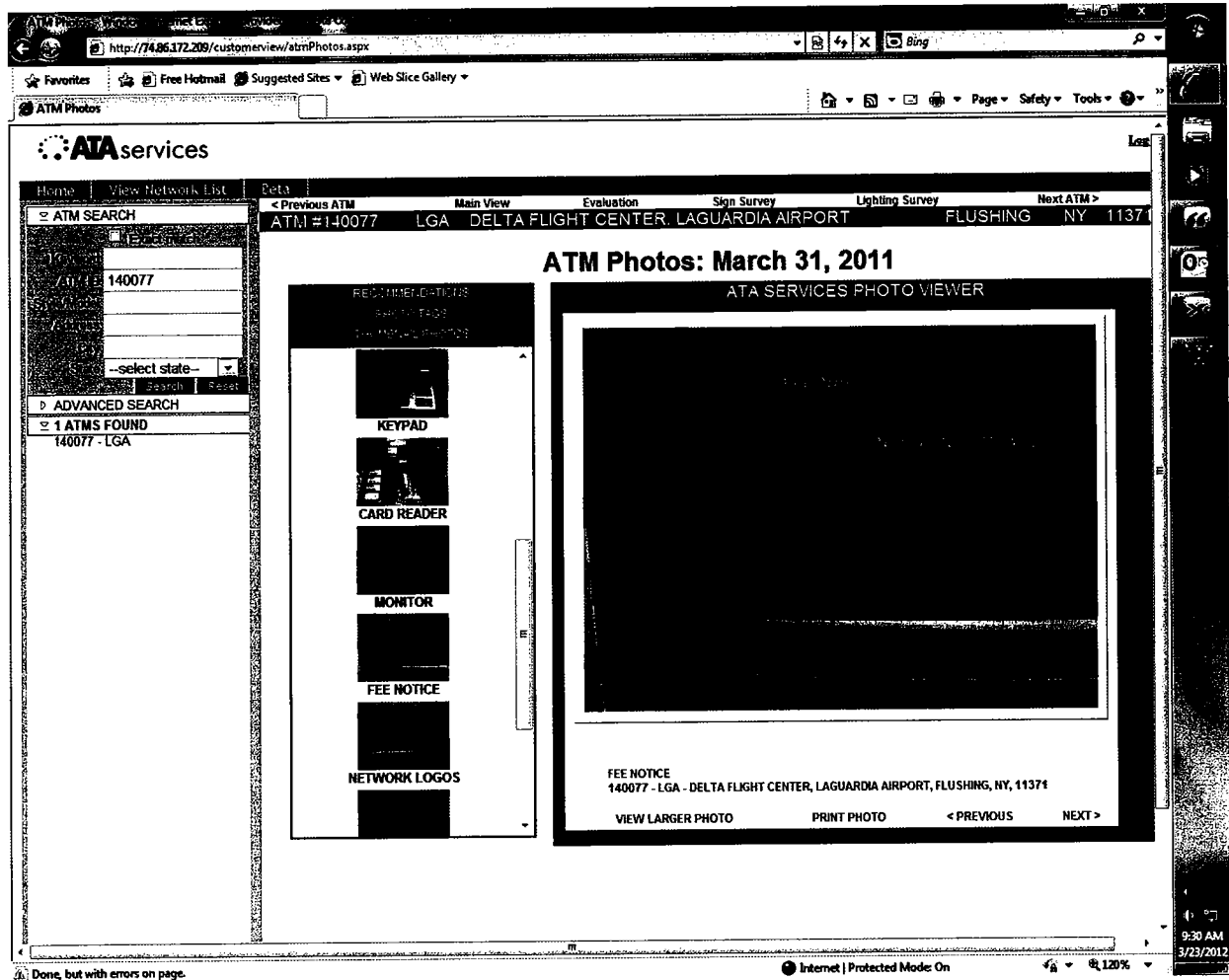
TORRE, LENTZ, GAMELL, GARY &  
RITTMASER, LLP  
*Attorneys for Defendant*  
*Delta Community Credit Union*

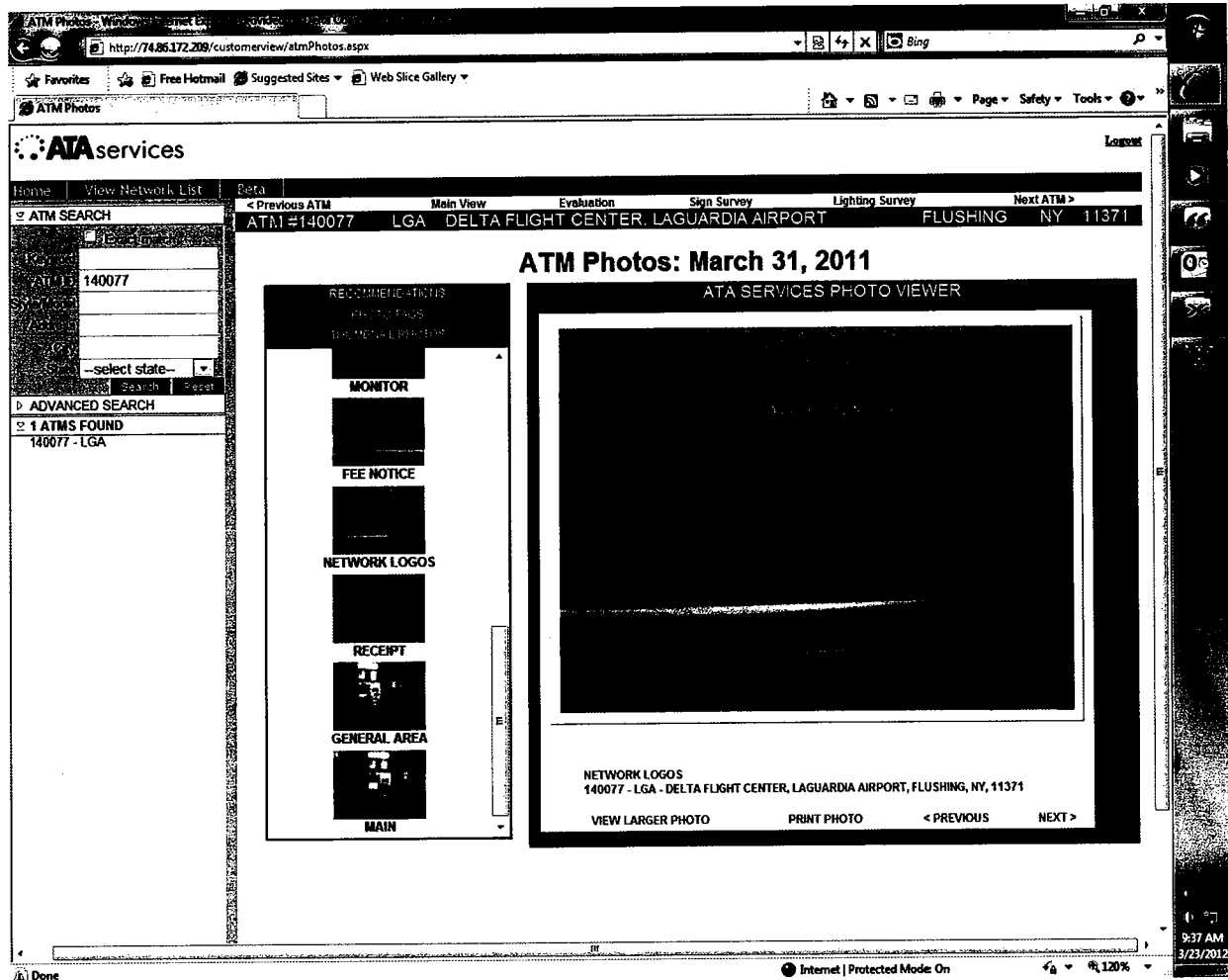
By:   
Roger A. Goodnough  
100 Jericho Quadrangle, Suite 309  
Jericho, NY 11753  
Tel.: (516) 240-8900

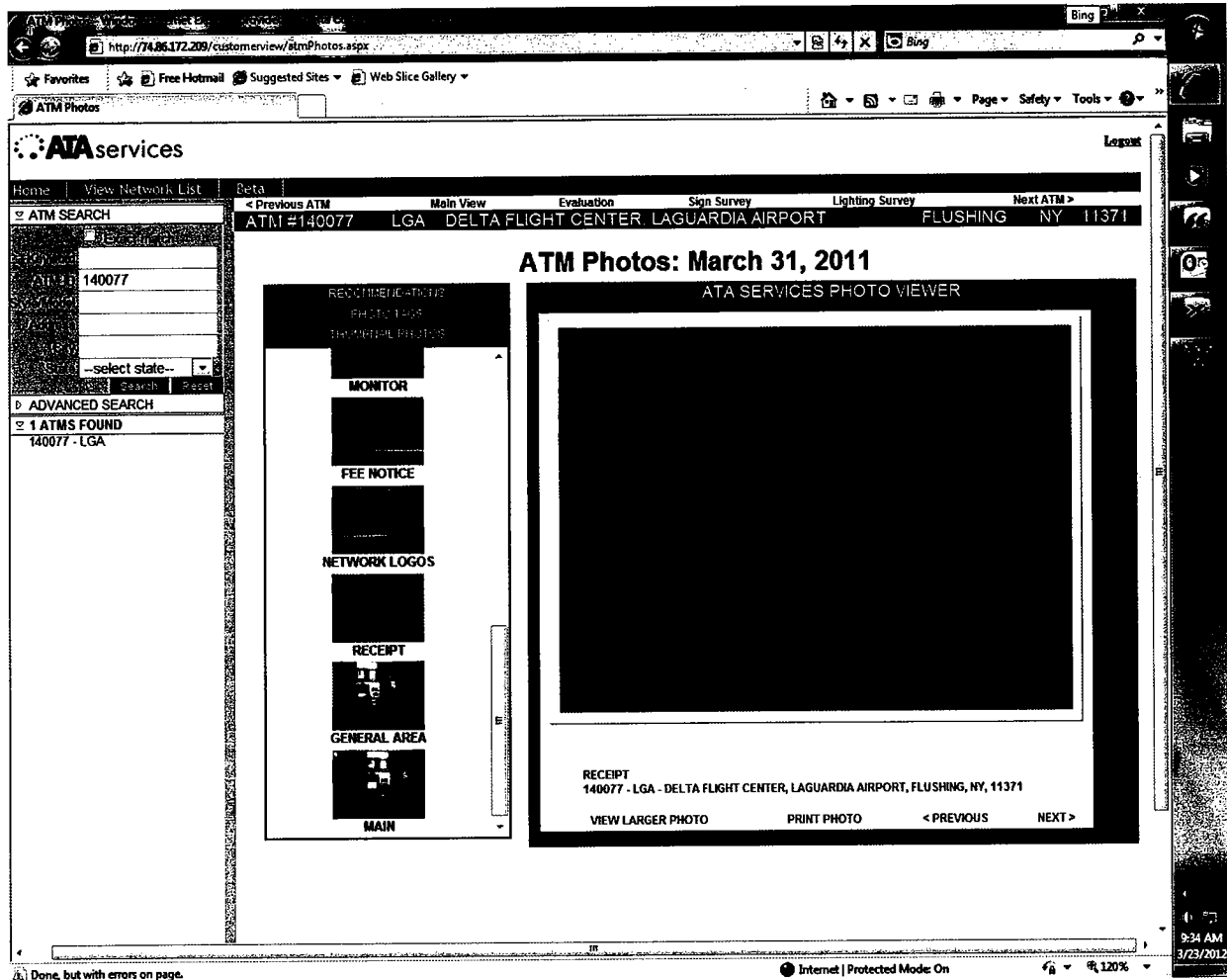
TO: SHIMSHON WEXLER, ESQ.  
THE LAW OFFICES OF SHIMSHON WEXLER, PC  
*Attorneys for Plaintiff*  
2710 Broadway, 2<sup>nd</sup> Floor  
New York, NY 10025  
Tel.: (212) 760-2400

# EXHIBIT A









# EXHIBIT B

ATA Services

2796 South Redwood Road  
Salt Lake City, Utah 84119  
P (801) 975-8860 F (801) 975-8863

**Date:** June 27th 2008  
**Quotation Valid:** September 27, 2008

**Prepared for:**  
Mike Brooks  
Delta Community Credit Union  
404-677-4706

**Prepared by:** Nicolle Solden  
P: 801-975-8860 ext. 138  
F: 801-975-8863  
[nsolden@ataservices.com](mailto:nsolden@ataservices.com)

	Quantity	Unit Price	AMOUNT

Semi-Annual Cleaning	Quantity	Unit Price	AMOUNT
Detailed Cleaning and on line data base	37	\$77.00	\$2,849.00
		\$30.00	\$0.00
Surcharge for locations in a secure site			\$0.00
ie. Behind airport security			\$0.00
<b>SUB TOTAL</b>			\$2,849.00
<b>TOTAL</b>			

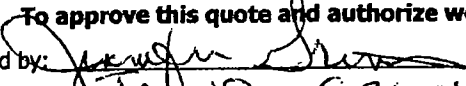
**PURCHASE TERMS:**

Deposit Due: \$ \_\_\_\_\_

Remainder billed: ☐ Upon Completion ☐ Monthly

1. Payment due upon receipt of each invoice, past due 30 days from the date of the invoice. Interest will be charged on all past due accounts at the rate of 18% per annum, compounded monthly.
2. State and local taxes due for products and services rendered by ATA are the sole responsibility of Client.
3. This Agreement will terminate upon conclusion or completion of services rendered hereunder. Prior to completion, either party may terminate this Agreement with or without cause upon 10 days prior written notice. Upon termination, ATA shall be paid for costs incurred, noncancelable commitment expenses and fees earned up to the date of termination.
4. All PMS colors that are reproduced in vinyl will be matched to the closest vinyl color available.
5. Unit price is valid for only the quantity represented in this quote. Decrease in quantity generally yeilds a higher unit price.

**To approve this quote and authorize work to begin, sign, date and fax back to 801-975-8863.**

Approved by:   
Printed Name: Jennifer Grimes

Date: 7/8/08

Thank you for considering ATA Services for your ATM maintenance work.  
For a complete overview of our services, please visit [www.ataservices.com](http://www.ataservices.com).



## Service Agreement

This SERVICE AGREEMENT (the "Agreement") is made as of the **27th** day of **June**, 2008, by and between AUTOMATED TELLER ACCESSORIES CORP., (D.B.A. ATA SERVICES), a Utah corporation ("ATA") with its principal office at 2796 South Redwood Rd., Salt Lake City, Utah 84119 and **Delta Community Credit Union** (the "Client") whose address is; **1025 Virginia Ave. Atlanta, Georgia 30354.**

### RECITALS:

WHEREAS, ATA provides certain repair and maintenance services to automated teller machines operated by others;

WHEREAS, Client is the owner or operator of approx. 40 automated teller machines in and around Georgia, a complete list of which is attached hereto (the "ATMs");

WHEREAS, Client desires to engage the services of ATA to provide certain repair and maintenance services to the ATMs on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. Scope of Services: ATA hereby agrees to provide the following repair and maintenance services to the ATMs (the "Services"):

- Detailing the machine using brushes and removing grime, adhesive residue and build-up (i.e. like detailing your car).
- Cleaning of all related parts including but not limited to; surround, kiosk, topper, sign box, ATM panel, island identifier, backdrop, camera window, marketing panels, night depository (within close range) and much more.
- Verify ATM ID – Doing an inquiry and coordinating the ID number.
- Check for Skimming Devices – Technicians are trained to identify non-standard devices that are added to the ATM. We will report these to you.
- Photos – Main, left, right, and fascia photos are taken at each site.
- Detailed Photos – Detailed photos of the machine and surrounding environment. Photos of customer notices, logos and signage. Also includes damage or poor condition photos.
- Online Database – These photos are loaded onto your own, secure, online database. Get information on your entire network at the click of a button.
- Empty Waste Receptacle – Removing trash from the area.
- Evaluate Network Logos – Check for and report missing and outdated logos. Can replace for an additional charge.
- Evaluate Customer Notices and Stickers – Check for and report missing stickers. Can replace for an additional charge.
- Evaluate Monitor Alignment, Functionality and Condition – We will report any problems.
- Replace Envelopes – Replenish customer-supplied envelopes if needed.
- Immediately Report Serious Problems – If there is any vandalism or damage beyond normal wear and tear, we will let you know immediately.
- Recommendations for Renewal Work – Condition ratings and recommendations will be detailed at the end of each project.
- *ATA SERVICES WILL BE RESPONSIBLE FOR SECURITY ACCESS TO ALL ATM SITES.*

2. Compensation and Payment: Client shall pay to ATA for the Services the following fees:

Each ATM will be billed **\$77.00** per visit. Kiosks will be charged at an additional **\$30.00** per visit. Surcharge for locations in a secure site ie. behind airport security will be charged at an additional **\$30.00** per visit

Each cleaning cycle will be billed separately and will be due and payable upon receipt as set forth below.

Payment is due upon receipt of each invoice, and is past due 30 days from the date of the invoice. Interest shall be charged on all past due accounts at the rate of 18% per annum, compounded monthly. If Client objects to all

or any portion of an invoice, Client shall notify ATA in writing within 10 days of Client's receipt of such invoice of Client's objection, and shall timely pay that portion of the invoice not in dispute. Client and ATA shall make every effort to promptly settle any invoice dispute. State and local taxes due for products and services rendered by ATA are the sole responsibility of the Client, and will not be quoted as part of any bid or proposal, and will be included on certain invoices. At ATA's discretion, prices shown may increase not more than 5% each year during the term of this agreement. In addition, if fuel costs exceed \$3.50 per gallon, a fuel surcharge may apply.

3. **Authority:** Each party represents to the other that it has the right, power, legal capacity, and authority to enter into, and perform its obligations under this Agreement, and no approvals or consents of any persons other than the parties hereto are necessary in connection with it. The execution and delivery of this Agreement by the parties has been duly authorized by their respective boards of directors or other corresponding governing body.

4. **Terms and Conditions:** This Agreement is subject to all of the Terms and Conditions set forth on the reverse side hereof, all of which are expressly incorporated herein.

The length of this agreement shall be for an initial period of two (2) years. To be automatically renewed for one additional year term, unless written notification is received by (the "Client") a minimum of 60 days prior to the end of the initial contract.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CLIENT:

AUTOMATED TELLER ACCESSORIES CORP.:

By: 

Its: Delta Community CU

By: \_\_\_\_\_

Its: \_\_\_\_\_

- ATA SERVICE WILL BE RESPONSIBLE FOR GAINING ACCESS TO ALL ATM SITES.
- Delta will ESTABLISH THE SCHEDULE FOR EACH SITE VISIT.
- 1 - ATM CLEANING ANNUALLY (140220)
- 10 - ATM'S CLEANING QTRLY
- ALL ARE LOCATED OUT OF THE STATE OF GEORGIA.

TERMINAL ID	LOCATION
140040	ORLANDO, FL
140210	TAMPA, FL
140205	BOSTON, MA
140113	NEW YORK, NY
140112	NEW YORK, NY
140216	NEW YORK, NY
140217	NEW YORK, NY
140212	CINCINNATI, OH
140208	DALLAS, TX
140002	CINCINNATI, OH



## Terms and Conditions

1. **Enforcement:** If any action is commenced to interpret this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and all other costs and expenses incurred in such action or proceeding, in addition to any other relief to which it may be entitled.
2. **Notices:** Any notice in connection with this Agreement shall be in writing, and shall be sent to the parties' addresses set forth above, or to such other address as a party may hereafter specify. Such notice shall be delivered in person, by certified or registered mail, overnight carrier, telex, telecopier or other similar facsimile transmission. Such notice shall be deemed given when there is documented delivery thereof to the party to whom the notice is given.
3. **Insurance:** During the period that services are performed under this Agreement, ATA shall maintain in force Worker's Compensation coverage in accordance with the laws of the state having jurisdiction over its employees engaged in the services rendered to Client, and shall maintain in force a commercial general liability policy with a combined single limit for bodily injury or property damage of \$1,000,000.00 for each occurrence. ATA shall cause Client to be named as an additional insured to all applicable policies at the written request of Client. Costs for increased policy limits, additional policies or naming of additional insureds on ATA's general liability policy, where ATA secures such increased coverage based on written request from Client, shall be reimbursed by Client at cost. ATA shall not be responsible for any loss, damage or liability arising from any contributing negligent or willful acts by Client, its subcontractors, agents, employees, third parties or other consultants over which ATA has no supervision or control.
4. **Indemnification:** ATA shall indemnify and hold harmless Client, its subcontractors, agents or employees, and their principals, officers, directors, employees and subcontractors, from and against all claims and actions, including reasonable attorney's fees, based upon, or arising out of, damages or injuries to persons or property caused by the error, omission or negligent act of ATA or any of its agents, subcontractors or employees in the performance of the services to be provided hereunder, subject to any limitations, other indemnifications or other provisions to which Client and ATA have agreed herein.
5. **Limitation of Damages:** In the event of any action by Client for breach or default hereunder, ATA shall not be responsible or held liable to Client for consequential damages including, but not limited to, loss of profit, loss of investment, loss of product, or business interruption.
6. **Independent Contractor Relationship:** ATA is an independent contractor of Client, and is not the agent or employee of Client. Nothing in this Agreement shall be construed in a manner that would constitute or create any employment, partnership, association, joint venture, agency or any relationship between the parties other than that of an independent contractor relationship.
7. **Subcontractors:** ATA shall have the right to hire any subcontractors (subject to Client's approval) whose services are considered by ATA to be necessary or desirable in order to continue or complete the services to be rendered hereunder.
8. **Entire Agreement:** This Agreement contains the entire agreement between the parties and supersedes all prior understandings and agreements, whether oral or in writing, between the parties respecting the subject matters of this Agreement. In the event that Client generates or produces a contractual document that contains additional terms and conditions (such as a purchase order) that may be inconsistent with the provisions set forth in this Agreement, it is understood and agreed that this Agreement is the prevailing document.
9. **Severability:** If any term, covenant, condition or provision of this Agreement, or any application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
10. **Termination:** This Agreement shall terminate upon the conclusion or completion of the services to be rendered hereunder. Prior to the conclusion or completion of the services to be rendered hereunder, either party may terminate this Agreement with or without cause upon 10 days prior written notice. Upon termination, ATA shall be paid for costs incurred, noncancelable commitment expenses and fees earned up to the date of termination.
11. **Confidentiality:** The parties acknowledge that any information provided by one party to the other pursuant to the terms of this Agreement is confidential and proprietary, and is provided solely for the use of the party to whom such information is provided. Each party agrees that it will not reproduce, disclose or disseminate such information to any other person except in the performance of the respective obligations hereunder, unless such information has already been made available to the general public or unless the disclosing party is required to disclose such information by a governmental or regulatory authority. The respective obligations of the parties pursuant to this section shall survive the expiration or other termination of this agreement.
12. **Choice of Law:** This Agreement shall be construed, interpreted and enforced according to the law in force in the State of Utah, as such law from time to time shall be in effect, except to the extent otherwise expressly provided herein.

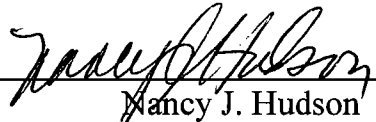
DPS	Term ID	Location	ATM model	Address	City	State	ZIP	Location	Behind	Security	Escort
	1 140040	Orlando	CSP 400	8474 Airport Blvd.	Orlando	FL	32827	70's concourse between gate 70 & 72	Yes		
	2 140210	Tampa	Diebold 1062ix	5201 W. Kennedy Blvd	Tampa	FL	33609	In employee cafeteria	Yes		
	3 140055	Cumberland Branch	NCR 5886	3250 Riverwood Pkwy	Atlanta	GA	30329	Drive-up			
	4 140056	RCC Building	Diebold 500	780 Doug Davis Drive	Atlanta	GA	30354	lobby of building before security	Yes		
	5 140104	Atlanta Airport (flight attendant)	Diebold 1062ix	Hartsfield Int'l Airport, 6000 S. Terminal Pkwy	Atlanta	GA	30320	Lower level of A concourse gate 19	Yes		
	6 140105	TOC Branch	Diebold 1064	1770 Aviation Blvd	Atlanta	GA	30354	Behind receptionist's office	Yes		
	7 140106	Air Logistics (Cargo) (door 60)	CSP 400	1600 Aviation Blvd	Atlanta	GA	30320	In Air Cargo lobby	Yes		
	8 140201	TOC	Diebold 1064	1500 Aviation Blvd.	Atlanta	GA	30354	Breakroom	Yes		
	9 140202	Admin	Diebold 1064	1021 North Loop Rd.	Atlanta	GA	30320	Located in Delta Complex, second floor break room	Yes		
	10 140203	Training Center	CSP 400	1021 North Loop Rd.	Atlanta	GA	30320	In lobby near reception desk	Yes		
	11 140211	Atlanta airport E concourse	CSP 400	Hartsfield Int'l Apt 8000 S. Terminal Pkwy	Atlanta	GA	30320	Flight attendant lounge	Yes		
	12 140218	Worldport Branch	Diebold 1062ix	Hartsfield Int'l Apt 8700 Spine Rd	Atlanta	GA	30320	On A concourse in the hallway to the branch near food court	Yes		
	13 140102	Camp Creek	Diebold 1073ix	Airline Drive	College Park	GA	30337	Rear of employee parking	Yes		
	14 140050	Fayetteville-Summit Point	Opteva 750	140 South Hwy 92	Fayetteville	GA	30215	Drive-up			
	15 140057	Drive Up	NCR 5886	850 Virginia Ave.	Hapeville	GA	30354	Drive-up			
	16 140059	Main Office Island	Opteva 750	1025 Virginia Ave.	Hapeville	GA	30354	Drive-up			
	17 140058	Main Office Branch	NCR 5886	1025 Virginia Ave.	Hapeville	GA	30354	Main lobby near cafeteria	Yes		
	18 140060	East Cobb	NCR 5886	1205 Johnson Ferry Road	Hapeville	GA	30068	Drive-up - in the parking lot			
	19 140061	West Cobb	NCR 5886	2827 Dallas Highway S.W.	Marietta	GA	30064	Drive-up			
	20 140063	Newman	Diebold 740	1826 Highway 34 East	Newman	GA	30263	Drive-up			
	21 140063	P.C.-North	NCR 5886	315 North Hwy 74	Peachtree City	GA	30269	Drive-up			
	22 140218	Peachtree City Branch	Diebold 1062ix	4772 Crosscreek Dr. (Brazilian shopping center)	Peachtree City	GA	30269	Brazilian shopping center between Kroger and Kmart			
	23 140058	Perimeter Branch	Opteva 750	1100 Hammond Drive Suite 100	Sandy Springs	GA	30328	Walk-up			
	24 140051	Eagles Landing	Opteva 750	285 Center Pointe Pkwy.	Stockbridge	GA	30261	Drive-up			
	25 140052	Mt. Zion	Opteva 750	5008 Mt. Zion Pkwy.	Florence	KY	41042	outside vestibule			
	26 140001	CVG Branch	Opteva 720	4885 Houston Rd Suite 102	Hebon	KY	41048	A concourse, 1st hall on left after up escalators in branch hallway	Yes		
	27 140002	CVG Airport	Diebold 1062ix	CVG Airport 3087 A Terminal	Boston	MA	02128	relocated from terminal C to terminal A	Yes		
	28 140205	Boston Airport	Diebold 1062ix	Delta Flight Center, LaGuardia Airport	Flushing	NY	11371	Delta Terminal @ Gate 3	Yes		
	29 140113	LGA	Diebold 1062ix	Marine Air Terminal, LaGuardia Airport	Jamaica	NY	11430	Terminal 3 take elevator to crown room down near gate 10	Yes		
	30 140217	JFK	Diebold 1062ix	JFK International Airport, Gate 11	Cincinnati	OH	45202	On 5th floor near stairs to 6th floor.	Yes		
	31 140218	JFK Terminal	Diebold 1062ix	655 Plum St. (5th floor)	Dallas	TX	75287	In employee cafeteria	Yes		
	32 140212	CVG Res	Diebold 1062ix	2409 N. Support	Southlake	TX	75082	Through the wall in front of branch	Yes		
	33 140208	DFW Res	Opteva 740	100 N Kimball Sta. 103	Newman	GA	30263	Drive-up Kiosk			
	34 140063	Newman	Opteva 740	1825 Highway 34 East	Buford	GA	30519	Located inside the Kroger store			
	35 140064	Buford (Kroger)	Opteva 740	3300 Hamilton Mill Road Buford, GA 30519	Buford	GA	30024	Located inside the Kroger store			
	36 140065	Suwanee (Kroger)	Opteva 740	2121 Lawrenceville Suwanee Road Suwanee GA Suwanee	Buford	GA	30024	Located inside the Kroger store			
	37 140068	Holly Springs	Opteva 740					Located inside the Kroger store			

**AFFIDAVIT OF SERVICE**

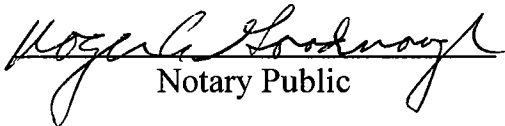
STATE OF NEW YORK   )  
  : ss.:  
COUNTY OF NASSAU   )

Nancy J. Hudson, being duly sworn, says: (1) I am not a party to this action, am over 18 years of age, and reside at Floral Park, New York; and (2) on May 15, 2012, I served the within **ANSWER** on each of the following attorneys (or parties) at the address set forth after said attorney's (or party's) name, that being the address designated by said attorney (or party) for that purpose, by depositing a true copy of same enclosed in a postage-paid, properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York located at 100 Jericho Quadrangle, Jericho, New York, addressed to:

SHIMSHON WEXLER, ESQ.  
THE LAW OFFICES OF SHIMSHON WEXLER, PC  
*Attorneys for Plaintiff*  
2710 Broadway, 2nd Floor  
New York, NY 10025

  
\_\_\_\_\_  
Nancy J. Hudson

Sworn to before me this  
15<sup>th</sup> day of May 2012

  
\_\_\_\_\_  
Notary Public

ROGER A. GOODNOUGH  
Notary Public, State of New York  
No. 02GO6593700  
Qualified in Putnam County  
Commission Expires Jan. 31, 2013

TORRE, LENTZ, GAMELL, GARY & RITTMASER, LLP

Index No.: 12-CV-1194 (WFK) (LB) 20

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

YEHUDAH KATZ, on behalf of himself and the class,

Plaintiff,

- against -

DELTA COMMUNITY CREDIT UNION,

Defendant.

ANSWER

TORRE, LENTZ, GAMELL, GARY & RITTMASER, LLP  
*Attorney(s) for Defendant Delta Community Credit Union*  
*Office and Post Office Address, Telephone*  
100 JERICHO QUADRANGLE, SUITE 309  
JERICHO, NEW YORK 11753-2702  
Tel: (516) 240-8900

To: Esq.  
Attorney(s) for

Service of a copy of the within

Dated, N.Y., is hereby admitted:  
20

Attorney(s) for